



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
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sdab@edmonton.ca
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Date: October 23, 2019
Project Number: 324350882-001
File Number: SDAB-D-19-171

Notice of Decision

- [1] On October 9, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 11, 2019. The appeal concerned the decision of the Development Authority, issued on September 10, 2019 to refuse the following development:

Construct an Accessory Building (detached Garage, 5.79 metres by 3.65 metres)

- [2] The subject property is on Plan 4847KS Blk 38 Lot 12, located at 9230 - 162 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- One online response.

- [4] The following exhibits were presented by the Appellant during the hearing and form part of the record:

- Exhibit A – Signatures in support of the development
- Exhibit B – Google aerial views of the subject site

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, A. Romano

- [8] The Appellant confirmed that there is an existing double garage with a 100 foot long, 18.5 feet wide driveway which exits on to 162 Street.
- [9] The adjacent neighbour to the south has a similar driveway running parallel to the Appellant’s driveway. This neighbour recently put up a fence separating the two driveways and the Appellant’s wife is no longer able to use the neighbour’s driveway for additional room to back out of her garage. She is uncomfortable backing down the long driveway and would like another garage with a shorter driveway.
- [10] The proposed development will not interfere with the City’s ability to maintain an existing power pole at the end of the lane and the Appellant does not believe the power pole would interfere with exiting the proposed garage.
- [11] There are issues with snow removal from the existing long driveway; however, the addition of the proposed garage will have no effect on these issues.
- [12] There are no utilities at the location of the proposed development.
- [13] An existing shed would be removed to make room for the proposed garage.
- [14] The Appellant spoke to his neighbours who are in support of the proposed development. He submitted signatures of support from 13 neighbours. (Exhibit A)
- [15] The Appellant agreed to have Google views of the subject property displayed to provide context to the site and the immediately surrounding properties. (Exhibit B)
- [16] It is not possible to install an additional overhead door on the existing double garage to exit to the alley as there is not enough room for a 10 foot driveway. A development permit was obtained at the time this garage was built in 2005 and it was approved with 3.5 feet from the end of the garage to the alley.
- [17] The Appellant did have a Development Permit for a minor home based landscaping business but this business is not operating. He was of the impression that the permit had been cancelled with the City. All of the tools and machinery currently stored in the existing double garage and shed are used to maintain the subject site. There is only

enough space to park one vehicle in the existing garage due to the equipment stored in the other parking space.

- [18] The proposed garage would be set back from the lane by approximately 2.5 feet and would not interfere with the sightlines of people exiting the alley.

ii) Position of the Development Officer, F. Hetherington

- [19] The Development Authority did not attend the hearing and the Board relied on Ms. Hetherington's written submission.

Decision

- [20] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [21] While the proposed development is an Accessory to a Permitted Use in the RF1 Single Detached Residential Zone, there are significant planning reasons to deny the appeal and confirm the Development Officer's decision.
- [22] Allowing the proposed single car garage would contravene Section 54.1(4) which stipulates that a maximum of one Driveway is permitted in either the Front Yard or the flanking Side Yard in any Residential Zone.
- [23] Furthermore, the proposed development is located within the Mature Neighbourhood Overlay (MNO). Section 814.3(17) of this Overlay prohibits vehicular access from a public roadway other than a lane.
- [24] It is the Board's determination that the combination of contravening both of these provisions of the Bylaw would create an undue impact on the amenities of the neighbourhood. While the Board did consider photographic evidence that there are neighbouring driveways with access from the Avenue or Street, part of the General Purpose of the MNO is to maintain the pedestrian-oriented design of the streetscape.
- [25] The amenities of this neighbourhood include pedestrian access along the sidewalks as well as the accessibility and use of the Lane. It is the opinion of the Board that allowing the proposed accessory building, driveway, and additional street access (crossing the sidewalk) would negatively impact the use of both of these amenities by the public.
- [26] The Board agreed with the Development Officer that the proposed reduction in the Flanking Side Setback may result in sight lines being obstructed to vehicles entering and exiting the lane. The location of an existing EPCOR power pole between the lane and the

proposed accessory building also complicates the site, and the minimum clearance required (or relocation) of this pole would have to be determined by EPCOR.

- [27] The Board agreed with the Development Officer that the siting of the proposed accessory building does not meet the setback requirements of Section 50.3(5)(c) and this may create future issues regarding encroachment into the City Road Right-of-Way.
- [28] The Board was also concerned about the proposed development given the scale of the existing driveway on this site. The driveway is accessed from 162 Street and is a significant hard-surface feature (rough approximation 28 meters by 5.3 meters) which provides access from the street all the way to the rear of this site to an existing double car garage. The Board heard evidence from the Appellant that there currently exist difficulties with snow removal from this hard surface; however, this situation would not be improved by the approval of the proposed additional single car garage development. An additional driveway would add more hard-surfacing to the site.
- [29] Based on the above, the Board finds the proposed development would unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. E. Solez, Mr. M. Young, Mr. J. Kindrake, Mr. L. Pratt

cc: Development & Zoning Services – F. Hetherington / A. Wen

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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SDAB-D-19-172

Application No. 314230342-001

An appeal to install (1) Minor Digital On-premises Off-premises Freestanding Sign (SIGNPATICO OUTDOOR | TIM HORTONS), and to remove an existing Freestanding On-premises Sign (246871770-001) was POSTPONED to November 7, 2019.



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Zona Developments
8851 - 158 Avenue NW
Edmonton, AB T5Z 3E2

Date: October 23, 2019
Project Number: 224518430-035
File Number: SDAB-D-19-173

Notice of Decision

[1] On October 9, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 16, 2019. The appeal concerned the decision of the Development Authority, issued on September 13, 2019, to refuse the following development:

Increase the occupancy of an existing Child Care Service from 36 to 56 children

[2] The subject property is on Plan 1623424 Unit 2, located at 7610 - 167 Avenue NW, within the CNC Neighbourhood Convenience Commercial Zone. The Edmonton North Area Structure Plan and Schonsee Neighbourhood Structure Plan apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Photos of similar daycares and an e-mail and attachment from Transportation Department.

Preliminary Matters

[5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Zona Developments

[8] Mr. M. Umarji appeared on behalf of Zona Developments.

[9] The site plan was displayed to identify the locations of the residential zone to the north and west, the approved childcare and proposed parking stalls, the car wash and the gas station 60 metres away.

[10] The current approved Child Care Services along with the increased capacity meets and exceeds the requirements of the *Edmonton Zoning Bylaw*.

[11] The views of the affected neighbours to the west and north of the Child Care Services will not change as a result of the increased capacity. The Child Care Services is screened with a landscaped berm and a 6 foot high wooden fence. The building and the play space area as approved will not change or expand.

[12] The Appellant reviewed the first two reasons for refusal which have already been addressed in previous decisions of this Board.

[13] The Development Officer cited Section 80.2(a)(v) as his first reason for refusal and stated that the drive aisle for the queuing spaces of the Rapid Drive-through Vehicle Services building creates a greater safety concern than the building bay itself.

- a. This drive aisle is only an issue if it services a car wash. If it were to service a Tim Horton’s or a Dairy Queen, there would be no concerns.
- b. Twenty two steel filled bollards have been installed to protect the Child Care Services and the pick-up and drop-off area from the drive aisle.
- c. The outside panels of the Child Care Services building are constructed of 10 inch concrete precast panels. The Appellant referred to a video clip which shows that if a car slams into one of these panels at 62 kilometers per hour that car would be bounced off.
- d. The Appellant provided several examples of other daycares operating in the City that have similar conditions as the subject site:
 - i. The Child Care abuts a car wash and/or has a gas station on the same site.
 - ii. Play area is next to a Dairy Queen queuing lane.

- iii. The play area is directly next to the vehicle access to an underground parkade.
- iv. The play area abuts a garbage pick-up area and a laneway.

None of these other Child Care have installed steel bollards for additional safety. In response to a question, the Appellant conceded he was not aware of the zoning that was in place for these other centers.

[14] The second reason for refusal cited Section 310.4(9) and the Development Officer had concerns regarding negative impacts to the residential areas directly to the north and west of the play area.

- a. There will be no changes to this previously approved play area as a result of the increased capacity.
- b. Along with a 5 foot berm and the landscaping, a PVC noise wall has already been constructed over the wood fence panels on the side of the fence facing the daycare.
- c. There is no impact to the height of the fence and neighbours' views of the fence are unaffected; it is still wood on their side.
- d. The Appellant provided examples of other Child Care facilities where the play area abuts single family homes.
- e. Neighbours they spoke with are happy with the hours of operation – 6:30 a.m. to 6:00 p.m., Monday to Friday only.
- f. One neighbour mentioned they liked the added security of a fully enclosed area behind their house.

[15] The third reason for refusal was: “The proposed location of the passenger pick-up/drop-off spaces requires children to cross the access aisle associated with a Rapid Drive-through Vehicle Service. This creates a safety concern and is contrary to Section 80.2(d) and Section 54.2, Schedule 1(A), subsection 29(a)(ii).

- a. The Bylaw allows pick up and drop off stalls to be within 100 metres of the daycare and it is only 32 metres to their furthest proposed pick-up and drop-off stall.
- b. The Transportation Department, the expert, has no concerns with the location of the proposed pick-up and drop-off stalls. In fact, Transportation suggested that the remaining 5 pick-up and drop-off stalls be moved to this location along 167 Avenue as well. This is contrary to what the Development Officer is requesting.
- c. An internal crosswalk is present even though Transportation does not require one.
- d. The Appellant would be amendable to having the requirement for the two extra pick-up and drop off stalls waived. They submitted a letter from a similar sized operating daycare to support this suggestion.

- [16] In summary, the increased capacity adds to the neighbourhood and will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [17] The Development Officer has incorrectly interpreted the bylaws and did not take the comments of the Transportation Department into account. However, should the Board determine that the bylaws were applied correctly, the Appellant respectfully requests a variance.
- [18] The Appellant provided the following responses to questions from the Board:
- a. The Child Care has not yet started operations and is currently taking registrations.
 - b. The additional two drop off and pick up stalls are not required due to the proposed child ratio. Drop-off times are staggered as some children are there all day, some are bussed in after kindergarten and other children are bussed in after school. There are also staggered pick-up times.
 - c. The buses use the pick-up and drop-off stalls by the front entrance of the facility but do not remain parked there.
 - d. It is not possible to access the car wash when travelling east on 167 Avenue. The only entrance is for west bound traffic. This 167 Avenue entrance is not open at this time and people are using 76 Street to access the 7-11 which is already operating. 167 Avenue services the neighbourhoods in the area and time will tell how busy it will become.
 - e. The entire site is still 90 percent under construction. The external improvements are complete but interior work is currently taking place.
 - f. The existing play area will be used more frequently but the intensity of use will not be higher at any given time.
 - g. The steel bollards run along the east side of the building and the entire daycare building is made of pre-cast panels. There are no windows along the east wall.
 - h. The car wash is not yet in operation; therefore, the Appellant was unable to confirm how many cars would be lined up waiting to get into the car wash on a busy day. He does know that the development has exceeded the requirement for queuing for an 8 stall car wash.
 - i. The peak times for a daycare and for a car wash do not align. Car washes tend to be the busiest on the weekend when the Child Care is not operating.
 - j. The request for additional capacity is being made because when registrations opened it was determined that an additional 20 after school care spaces were required.

- k. The operator has changed since the time of the June, 2019, Board decision. The Appellant is not affiliated with the Child Care at all; he is just speaking on their behalf.
- l. No complaints have been received from adjacent neighbours regarding the increased capacity.
- m. The Appellant has no concerns with the suggested conditions of the Development Officer should the Board grant this appeal.

ii) Position of the Development Officer, Mr. C. Kennedy

[19] The Development Authority did not attend the hearing and the Board relied on Mr. Clark's written submission.

Decision

[20] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. This Development Permit authorizes an increase in the occupancy of an existing Child Care Service from 36 to 56 children. The development shall be constructed in accordance with the stamped and approved drawings as revised. (see attached)
2. The Development Permit shall not be valid unless and until any conditions of approval, except those of a continuing nature, have been fulfilled. (Reference subsection 17.1(1)(a))
3. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. (Reference subsection 310.4(7))
4. Loading, storage and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways or a LRT line in accordance with the provisions of Section 55.5 of the Zoning Bylaw. (Reference subsection 310.4(7))
5. Where outdoor play space is provided at ground level it shall be fenced on all sides and all gates shall be self-latching. (Reference subsection 80(3)(a))
6. Passenger pick-up/drop-off spaces shall be designed with signs to reserve the parking spaces for Child Care Services pick-up/drop-off. (Reference section 54.2, Schedule 1(A), subsection 29(a)(i))
7. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents

or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind, except for the purpose of Special Events. (Reference subsection 54.1(1)(c))

8. Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application. (Reference subsection 54.1(3)(a)(i))
9. Parking spaces for the disabled shall be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference subsection 54.1(3)(a)(iii))
10. All required parking spaces shall be clear of any access driveways, aisles, ramps, columns, Signs or other similar obstructions. (Reference subsection 54.2(4)(a))

ADVISEMENTS:

1. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
2. Signs require separate Development Permit applications.
3. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

[21] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required passenger pick-up/drop-off spaces as per Section 54.2 Schedule 1(A), subsection 29(a) is varied to allow a deficiency of 2 passenger pick-up/drop-off spaces, thereby decreasing the minimum required passenger pick-up/drop-off spaces to 5.

Reasons for Decision

[22] Child Care Services is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone. The Board must determine whether or not the proposed Discretionary Use is compatible with surrounding land uses and whether it should be allowed at this location.

- [23] The Board finds that no portion of the proposed Child Care Services is adjacent to the bay of the Rapid Drive-through Vehicle Services pursuant to section 80.2.(a)(v). As noted in the Development Officer's reasons for refusal, the Board is in agreement that the proposed Child Care Services is in fact abutting the queuing spaces of the Rapid Drive-through Vehicle Services.
- [24] The Board also notes that there was no opposition received to this application and no one appeared in opposition at the hearing.
- [25] The Board determined that the proposed Child Care Services Use includes a variety of timing mitigation factors that decrease and limit its potential impact on neighbouring Uses and developments. The proposed hours of operation for the Child Care Services are approximately 6:30 am to 6:00 p.m. Monday to Friday with no evening or weekend hours. Also, the Board accepted the evidence presented that the children using the Service will arrive at a variety of times throughout the day, including a significant proportion who will be bussed in together.
- [26] The Board determined that the proposed outdoor child play space is further mitigated in its impacts to the surrounding residential Uses through landscaping design as well as the installation of sound reduction fencing. This fencing will face the interior of the site and allows the residential facing side of the fence to retain its residential appearance.
- [27] The Board is granting this development a variance to section 54.2 Schedule 1(A), subsection 29(a). The Development Officer has calculated the required number of pick-up drop-off stalls to be 7 for the occupancy applied for this development, however, the Board has determined only 5 are necessary and waives the additional 2 stalls. This is due to the information received during the hearing regarding the proposed operation of the Child Care Services. These stalls shall be designated immediately in front of the entrance to the Child Care Services.
- [28] Eliminating any pick-up/drop-off stalls at a farther distance from the Child Care Services entrance eliminates the safety, access or visibility concerns that had been previously identified for children walking across the parking lot and crossing the Rapid Drive-through queuing lane.
- [29] The Board appreciated the extent of the safety measures included by the Appellant in the site design and exterior features, including 10" precast panel walls, concrete filled steel bollards, a guardrail and speedbumps. Combined with the proposed operational plans for the Child Care Service, the Board is satisfied that safety risks are minimized.
- [30] While the Appellant presented the Board with numerous photos of Child Care Services adjacent to queuing lanes, drive aisles or Rapid Drive-through Vehicle Services, the Board notes that it is difficult to compare these cases to the current application without knowing the zoning or Bylaw in effect at the time or knowing the particular site conditions.

- [31] The Board is of the opinion that the potential for conflict of Uses in the access immediately in front of the site is sufficiently mediated by the operations of the Child Care Services, the safety features incorporated into the plan and the varied timing of surrounding Uses including the adjacent Rapid Drive-through Vehicle Services.
- [32] For all of the above reasons, the Board finds that the proposed development is reasonably compatible with the surrounding area and the proposed development, with a variance, would not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. E. Solez, Mr. M. Young, Mr. J. Kindrake, Mr. L. Pratt

cc: Development & Zoning Services – C. Kennedy / H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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